



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2017-0023; A-1-FRL-9965-10-Region 1]

Air Plan Approval; ME; Consumer Products Alternative Control Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Maine Department of Environmental Protection (Maine DEP). The SIP revision consists of an Alternative Control Plan (ACP) for the control of volatile organic compound (VOC) emissions from Reckitt Benckiser's Air Wick Air Freshener Single Phase Aerosol Spray, issued pursuant to Maine's consumer products rule. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective **[Insert date 60 days after date of publication in the Federal Register]**, unless EPA receives adverse comments by **[Insert date 30 days after date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2017-0023 at <http://www.regulations.gov>, or via email to Mackintosh.David@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit

electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: David L. Mackintosh, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109-3912, tel. 617-918-1584, email Mackintosh.David@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

Maine's Chapter 152, "Control of Emissions of Volatile Organic Compounds from Consumer Products" (Chapter 152) became effective in the State of Maine on September 1, 2004 and was approved by EPA into the Maine SIP on October 24, 2005 (70 FR 61382). Maine subsequently amended this rule. The current amended version of the rule became effective in the State of Maine on December 15, 2007 and was approved by EPA into the Maine SIP on May 22, 2012 (77 FR 30216). Chapter 152 contains VOC content limits for the manufacture and sale of various consumer products in the state of Maine. Chapter 152 also provides for state and EPA approval of ACPs by allowing the responsible party the option of voluntarily applying for such agreements.

On March 30, 2012, the Maine DEP received an ACP application from Reckitt Benckiser LLC (Reckitt) for Reckitt's Air Wick Air Freshener Single-Phase Aerosol Spray pursuant to Chapter 152. The Maine DEP approved the Reckitt ACP effective April 23, 2013 and on the same day sent EPA the ACP for approval into the Maine SIP.

II. Description and Evaluation of the State's Submittal

Reckitt manufactures Air Wick Air Freshener Single-Phase Aerosol Spray (Product), which is offered for retail sale and wholesale distribution in the State of Maine. The Product contains 4.6% VOCs by weight. The Chapter 152 regulatory content limit for single-phase aerosol air freshener is 30% VOCs by weight. Reckitt's ACP generates VOC credits, expressed in pounds of VOCs, based on the difference between the Product VOC content and regulatory VOC limit

for each unit sold in the State of Maine. Credits generated are subject to the conditions in the ACP Approval. Reckitt shall monitor Maine sales of the Product and each calendar quarter shall provide to the Maine DEP accurate records and documentation as a basis for compliance reporting. Only sales in the State of Maine that are substantiated by accurate documentation shall be used in the calculation of VOC emissions and emission reductions (surplus reductions). The resulting surplus reduction credits shall be discounted by 5% prior to the issuance of the surplus emission reduction certificates by the Maine DEP. Reckitt must maintain a minimum of three years of detailed transactional data, traceable to invoice levels. Maine DEP shall issue surplus reduction certificates which establish and quantify to the nearest pound of VOC reduced, surplus reductions achieved by Reckitt operating under the ACP.

Surplus reduction certificates shall not constitute instruments, securities, or any other form of property. The issuance, use and trading of all surplus reductions shall be subject to the conditions within the ACP. Any surplus reductions issued by Maine DEP may be used by Reckitt until the reductions expire, are traded to another responsible party operating under a SIP-approved ACP, or until the ACP is canceled. A valid surplus reduction shall be in effect starting five days after the date of issuance by the Maine DEP, for a continuous period of one year at the end of which period the surplus reduction shall then expire. Surplus reductions cannot be applied retroactively to any compliance period prior to the compliance period in which the reductions were generated. While valid, surplus reductions certificates can only be used in the State of Maine to:

- (1) adjust either the Consumer Product ACP emissions of either Reckitt or another ACP responsible party to which the reductions were traded, provided the surplus reductions are not to be used by any ACP responsible party to lower its ACP emissions when its ACP

emissions are equal to or less than the ACP limit during the applicable compliance period; or

- (2) be traded for the purpose of reconciling another approved Consumer Product ACP responsible party's shortfalls.

EPA has reviewed the ACP and has determined that it is approvable. Reckitt must still, at a minimum, comply with the VOC content limits in Maine's SIP-approved Chapter 152.

However, to the extent that the company documents, as outlined in the ACP, the sales of Product in Maine with a VOC content below these limits, the Maine DEP will issue VOC emission reduction credits that may be used in the future. Since to date, this is the first and only Consumer Product ACP submitted by the State of Maine for SIP approval, reduction certificates generated may only be held for future use until they expire (i.e., for one year). Certificates generated may only be used after a second Consumer Product ACP is submitted by Maine, and approved by EPA, into the Maine SIP. Thus, this SIP revision meets the anti-back sliding requirements of Section 110(l) of the Clean Air Act.

III. Final Action

EPA is approving, and incorporating into the Maine SIP, an ACP for Reckitt Benckiser's Air Wick Air Freshener Single Phase Aerosol Spray.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed.

This rule will be effective **[Insert date 60 days after date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days after date of publication in the Federal Register]**.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 60 days after date of publication in the Federal Register]** and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the alternative control plan issued by the Maine DEP to Reckitt described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov, and/or at the EPA Region 1 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit **by [insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 5, 2017.

Deborah A. Szaro,
Acting Regional Administrator,
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart U - Maine

2. In § 52.1020(d), the table is amended by adding an entry for “Reckitt Benckiser's Air Wick Air Freshener Single Phase Aerosol Spray” at the end of the table to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(d) * * *

EPA-Approved Maine Source Specific Requirements

Name of source	Permit number	State effective date	EPA approval date²	Explanations
**	*	*	*	**
Reckitt Benckiser's Air Wick Air Freshener Single Phase Aerosol Spray	Alternative Control Plan	4/23/2013	[Insert <u>Federal Register</u> date of publication] [Insert <u>Federal Register</u> citation]	Issued pursuant to Chapter 152 Control of Volatile Organic Compounds from Consumer Products

² In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

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[FR Doc. 2017-15048 Filed: 7/18/2017 8:45 am; Publication Date: 7/19/2017]